Supreme Court, U.S.
FILED
OCT 10 1995
OFFICE OF THE CLERK

NO. 95-640

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JACK F. GRIMM and
JOANNE LAMPE CHARLTON,
Petitioners,

v.

COLUMBUS-AMERICA DISCOVERY GROUP, INC.
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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34 PP

QUESTIONS PRESENTED

I. Whether a salvor who seeks an award for providing information which contributes to the ultimate safety of property must establish a proprietary interest in the data provided, as to which courts of appeal are in conflict.

II. Should this Court's power of supervision be exercised to correct error caused by the court of appeals sanctioning a departure from accepted and usual course of discovery proceedings by the district court?

LIST OF PARTIES

The parties to the proceeding below were the petitioners, Jack F. Grimm and Joanne Lampe Charlton, Personal Representative of the Estate of Harry G. John and the petitioners, Atlantic Mutual Insurance Company, Salvage Association, London Assurance, Alliance Assurance Company, Ltd., Royal Exchange Assurance, Indemnity Marine Assurance Company, Ltd., Marine Insurance Company, Ltd. and the Superintendent of Insurance of the State of New York (collectively referred to as the "Underwriters") and the respondent, Columbus-America Discovery Group,

Inc. ("CADG").

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ATLANTIC MUTUAL INSURANCE COMPANY, et al.,

Petitioners,

v.

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Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

PETITION FOR WRIT OF CERTIORARI

Jack F. Grimm and Joanne Lampe Charlton, Personal Representative

of the Estate of Harry G. John, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, dated June 14, 1995, is reported as Columbus-America Discovery Group v. Atlantic Mutual Insurance Co., 56 F.3d 556 (4th Cir. 1995) (hereinafter "CADG II"), and is reproduced at page 1a of the Appendix to this Petition ("Pet.App."). The opinion of the United States District Court for the Eastern District of Virginia dated November 18, 1993, is unreported and is reproduced at Pet.App.74a. The Order entered January 13, 1994 approving the Marketing Plan is not published and is reproduced at Pet.App.203a. The Order of the United States Court of Appeals for the Fourth Circuit denying rehearing and denying rehearing in banc, dated July 11, 1995, is not published and is reproduced at Pet.App.402a.

The first opinion of the United States Court of Appeals for the Fourth Circuit dated August 26, 1992, is reported as Columbus-America Discovery Group v. Atlantic Mutual Insurance Co., 974 F.2d 450 (4th Cir. 1992), cert.denied, 123 L.Ed.2d 183, 113 S.Ct.1625 (1993) (hereinafter "CADG I") and is reproduced at Pet.App.217a. The order of the Supreme Court of the United States of America denying the respondent's Petition for Writ of Certiorari dated March 22, 1993 is not published and is reproduced at Pet.App.399a.

The first opinion of the United States District Court for the Eastern District of Virginia dated August 14, 1990, is reported as Columbus-America Discovery Group v. The Unidentified, Wrecked and Abandoned Sailing Vessel, 742 F.Supp. 1327 (E.D. Va. 1990) rev'd, in part, remanded, sub nom. Columbus-America Discovery Group v. Atlantic Mutual Ins. Co. et al., 974 F.2d 450 (4th Cir. 1992), cert.denied, 123 L.Ed.2d 183, 113 S.Ct. 1625 (1993) and is reproduced at Pet.App.322a. The Order of the United States Court of Appeals for the Fourth Circuit denying the

Motion for Clarification dated April 4, 1994 is not published and is reproduced at Pet.App.398a. The Order of the United States Court of Appeals for the Fourth Circuit denying rehearing and denying rehearing in banc, dated October 15, 1992 is not published and is reproduced at Pet.App.404a.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C., § 1254(1).

STATEMENT OF THE CASE

Petitioners, Harry G. John and Jack F. Grimm intervened in this salvage action alleging that Columbus-America Discovery Group ("Columbus-America") in its search for the CENTRAL AMERICA used information obtained from Columbia University which the University gathered during a sonar survey which it conducted for Santa Fe Communications, Inc. ("Santa Fe") in February-March, 1984. In 1986 Columbia University sent materials gathered during that survey to Columbus-America upon the false

representation of Thomas G. Thompson that they were to be for his sole use and would not be reproduced for others.

Harry G. John was one of a number of individuals and groups who discussed and planned the salvage of the CENTRAL AMERICA. John used his company, Santa Fe, in his treasure hunting efforts. By reason of a contract which Grimm made with the University in 1980 he had the right to use Columbia University's side scan sonar for a period of five years. Grimm and John pooled their resources and agreed to work together to locate the CENTRAL AMERICA.

Santa Fe paid Columbia University Three Hundred Thousand ($300,000.00) Dollars for the University's Lamont-Doherty Geological Observatory to conduct a sonar search over a 400 square mile area of the Atlantic Ocean. The expedition was directed by Dr. William Ryan. During his sonar search, Dr. Ryan identified seven "targets" on the ocean floor. Of these targets, he found only one, target #4, to be a good candidate for being the CENTRAL AMERICA. Dr.

Ryan felt that this target was almost certainly the scattered debris of a shipwreck, and his report mentioned that further exploration of it would have been made but for gale force winds and seas. He told Harry John and Jack Grimm that they had had a likely candidate for further exploration, and recommended that they use a submersible to determine if it was the CENTRAL AMERICA.

Between the spring of 1984 and the summer of 1987 a manned submersible was not available for work in the Blake Plateau Region.

In December, 1984 a majority of the Board of Directors of Santa Fe decided not to advance further funds in search of treasure and over the objection of Harry John assigned all of its interests in undersea salvage operations to the Province of St. Joseph of the Capuchin Order.

The Santa Fe survey was performed from the deck of the University's research vessel ROBERT CONRAD. Upon completion of the survey the CONRAD headed for Bermuda. Within one day after the CONRAD's arrival in Bermuda,

Thompson began his efforts to learn the findings of the survey.

Mr. Ryan had his first telephone call from Thomas Thompson in 1984. Thompson introduced himself as an employee of the Battelle Laboratories and told Ryan that Battelle did commercial work of a proprietary nature for commercial clients, classified work for the military and basic research. Thompson told Ryan he was interested in sonar, particularly in the SeaMARC sonar system, how it was used, what results you get and how the user analyzed the data to recognize and define anomalies, or targets, on the ocean floor. Between 1984 and 1986, Thompson and Ryan had numerous conversations concerning various sonar searches that Lamont-Doherty had conducted using the SeaMARC I, culminating in Thompson's February 12, 1986 request for copies of the sonar record and contour map data from the 1984 CONRAD survey.

Ryan passed on Thompson's request to his division administrator, who on March 19, 1986 wrote a letter to Thompson at

Battelle granting the request on the condition that the data would be for Thompson's sole use and not reproduced for others, because "the data ... is not in the public domain." The letter also stated that Columbia would not relinquish its exclusive right to publish the data until its graduate students who were working with the data had published their dissertations. Ryan believed that Thompson was interested in this information from a scientific standpoint.

Thompson agreed to Columbia's terms and received the data which, in addition to the sonar photographs and a contour chart, included the CONRAD's ship track lines, indicating the vessel's path within the survey boundaries.

A. Columbus-America's Sonar Survey

Columbus-America conducted a sonar survey in June-July 1986 in an effort to locate the CENTRAL AMERICA. In preparing for this survey it made an historical study of the sinking of the vessel and a study of the area winds and currents and their effect on drifting objects.

The information developed in the foregoing studies led to the creation of a Probability Map covering about 2400 square miles of the ocean which they divided into two mile square cells. Each cell was given a number indicating the probability that the wreck was in that cell multiplied by 1000. A Search Plan which covered over 1000 square miles of ocean was then carved out of the Probability Map. The Search Plan was designed to include each of the two mile square cells which had been assigned a probability of one in one thousand or more.

The data which Thomas Thompson obtained from William Ryan was on board the Columbus-America's vessel during their 1986 survey.

A sonar image of the CENTRAL AMERICA was obtained during the 1986 survey, but it was not obtained within the boundaries of the Search Plan. If Columbus-America had not gone beyond the western boundary of the Search Plan their vessel would have returned to port without having obtained a sonar image of the CENTRAL AMERICA.

At the time the CONRAD materials were sent to Thompson by Columbia University he was working with Messrs. Evans, Williamson, Newton and others looking for the CENTRAL AMERICA. Thompson violated Columbia's conditions for letting him have the CONRAD data by sharing the information which he obtained from the University with Robert Evans, the Vice President and Project Director of Columbus-America, and with his sonar specialist Michael Williamson.

Thompson showed Evans the CONRAD materials shortly after they were received from the University. Evans and Thompson examined the photographs of the sonar imagery recorded during the CONRAD survey together and discussed targets shown in the photographs. After he discussed the materials with Thompson, Mr. Evans examined them alone. Evans unfolded the maps and looked at the photographs in general. Evans found the bathymetric map to be very detailed; he had never before seen a bathymetric map of that area which was so detailed. He examined sonar targets shown on the photographs and he was able to

determine the complexity of the geology from the photos.

Thompson showed Michael Williamson the CONRAD data during the Columbus-America 1986 survey. Thompson and Williamson looked at the records together and saw the sonar imagery on a few of the photographs.

B. Proceedings Below

1990 Trial

At the conclusion of the 1990 trial the district court, Richard B. Kellam, Senior District Judge, found that there was no evidence to support the salvage claim of John and Grimm. On appeal the Fourth Circuit held that the court had abused its discretion by refusing John, Grimm and Columbia University an opportunity for discovery prior to trial. The court of appeals remanded the case to the district court to apply the law of salvage stating that should it be found that Columbus-America used the intervenors' information and such use contributed to the discovery of the CENTRAL AMERICA, a salvage award could be proper.

1993 Trial

At the conclusion of the 1993 trial the district court, Richard B. Kellam, Senior District Judge, held the proof of Grimm and John insufficient to establish that Columbus-America had availed itself of any of the data gathered during the CONRAD expedition. Pet.App.-167a.

1995 Appeal

The court of appeals recognized that Thompson violated the conditions imposed by Columbia University when it sent Thompson the CONRAD data, in that Thompson placed the materials in the Columbus-America file which was taken on their 1986 survey and that he shared the data with Williamson, his sonar expert, and Evans, his project director. Pet.App.26a.

Despite the violation of the University's conditions, the district court accepted the testimony of these three witnesses, each of whom are to share in the profits of the venture, that they made no use of the data. The appellate court did not disturb

this fact finding.

The court of appeals also recognized that Thompson's sonar image of the CENTRAL AMERICA was recorded in a zero cell, one with an assigned probability of less than one in one thousand, which was located very close to the southwest extreme of the Probability Map. The court of appeals did not refer to the fact that the cell in which the sonar image was recorded was located beyond the boundary of their Search Plan. The Search Plan was approximately one-half the size of the Probability Map.

The court of appeals held that Grimm and John had to demonstrate that they had a proprietary interest in the CONRAD data and that Columbus-America without authority used the data in a manner inconsistent with their proprietary interest.

No authority was offered to support the requirement that a salvor who claims an award for providing information must demonstrate that he had a proprietary interest.

REASONS FOR GRANTING THE PETITION

1. The opinion of the court of appeals that the intervenors' lack of a proprietary interest in the CONRAD data provides an independent ground for its affirmance of the district court's judgment conflicts with South American S.S. Co. v. Atlantic Towing Co., 22 F.2d 16, 17 (5th Cir.1927).

2. The case presents an important problem under the Federal Rules of Civil Procedure as to the extent of the discretion of the district court in ruling upon claims of privilege when a party withholds information otherwise discoverable.

I. THE DETERMINATION OF THE COURT OF APPEALS THAT A SALVOR WHO CLAIMS AN AWARD FOR PROVIDING INFORMATION WHICH CONTRIBUTES TO THE EVENTUAL PRESERVATION OF CARGO MUST ESTABLISH THAT HE HAD A PROPRIETARY INTEREST IN THE INFORMATION CONFLICTS WITH SOUTH AMERICAN S.S.

CO. V. ATLANTIC TOWING CO., 22 F.2d 16, 17 (5TH Cir.1927).

Harry John and Jack Grimm based their claim for salvage upon the fact that their efforts led to the creation of the CONRAD survey and the information developed in the CONRAD survey assisted Columbus-America in finding the CENTRAL AMERICA.

Admiralty law recognizes that the giving of advice or information leading to the preservation of property in peril qualifies for a salvage award. So long as a ship or her cargo is in peril, any voluntary act which contributes to the ultimate safety of the property may rank as an act of salvage. As stated in Gilmore and Black, The Law of Admiralty, 2nd ed.1975 at page 536, it would be fruitless to list the almost infinite range of acts which have been held to constitute salvage. Examples they do cite involve giving information on the channel to follow to escape from an ice flow (The Tower Bridge [1936] P. 30), and giving information to avoid running aground (South American S.S. Co. v.

Atlantic Towing Co., 22 F.2d 16 (5th Cir.1927).

It cannot be said that either of the salvors in the foregoing cases had a proprietary interest in the information they provided.

In South American S.S. Co. v. Atlantic Towing Co., (supra) the claimant was given a salvage award based upon his having told another vessel's crew that they were proceeding into shallow water and that they should change course. The vessel altered its course and avoided the danger of grounding.

It is also to be noted that Columbia University did not base its claim for salvage for having performed the CONRAD survey.

In its memorandum of law submitted in opposition to Columbus-America's motion for summary judgment, Columbia University stated:

> Columbia's claim to a salvage award is based on the fact that it provided the 1984 survey data to

Columbus-America and that Columbus-America used the data to help it locate the CENTRAL AMERICA.

Columbia University had no grounds upon which to base a claim for performing the survey. It received $300,000.00 for that work. The salvor's act must be voluntary - that is, he must be under no official or legal duty to render the assistance. Gilmore & Black at page 535.

Even if Columbia University was entitled to a salvage award on proof that Columbus-America used the CONRAD survey, that does not foreclose Grimm and John's claim for salvage. Useful services of any kind rendered to cargo in peril may entitle those who render such services to a salvage award. More than one set of salvors may contribute to the saving of the property, and in such cases all who engaged in the enterprise and materially contributed to the saving of the property, are entitled to share in the reward. The Blackwall, 77 U.S. (10 Wall.) 1, 11-12 (1870).

II. THE DECISION OF THE COURT OF APPEALS IS ERRONEOUS.

One of the clearly erroneous findings of the district court was that Ryan's target #4 was not the CENTRAL AMERICA.

The court of appeals wrote: Actually the district court found that CONRAD TARGET #4, despite its apparent similarity in size and admitted proximity to the proven location of the CENTRAL AMERICA, was not in fact the shipwreck. Because we affirm the court's denial of the intervenors' claim on sufficient alternative grounds, we need not review this particular finding. Pet.App.37a.

The district court's finding that target #4 was not the CENTRAL AMERICA was patently wrong.

The difference between the coordinates given to Mr. John by Dr. Ryan and the coordinates given to the court by Columbus-America arises from navigational computation, not from any difference in actual location. The sonar photographs in evidence which include an image of the CENTRAL

AMERICA reveal no other targets within the short distance between the two sets of coordinates (Exhibits A-637, A-627-2 and D-451).

While the court of appeals agreed with John and Grimm's argument that the CONRAD data was not in the public domain (Pet.App.33a), the court of appeals did not review several crucial findings which, if recognized as clearly erroneous would compel the conclusion that the ultimate finding that Columbus-America did not make use of the CONRAD data was clearly erroneous; e.g., Finding: Williamson who was the Columbus-America sonar expert said that in his opinion the CONRAD data was of little value. FACT: Williamson testified that he was able to determine the latitude, longitude and size of target #4 from the sonar photograph and the target was worthy of investigation for the possibility of it being the CENTRAL AMERICA.

III. THE COURT OF APPEALS SANCTIONED THE DISTRICT COURT'S DEPARTURE FROM ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS

The difficult job of establishing fraudulent behavior in planning and conducting the sonar search, and the activities of Columbus-America at sea in 1987, was made more difficult by the district court's failure to direct the production of navigational records which we were told existed at the 1990 trial, diving or camera logs, pictures and videos, apart from what they selected from their library to show us, and recovery records of artifacts. Charts reflecting actual track lines run in 1986 and 1987 were not produced until the trial.

Columbus-America was not directed to give us the position of the Central America until the second day of the trial.

Virtually all of the ships' logs were heavily redacted.

Efforts of Grimm and John to obtain production of documents began with a motion for a Discovery Conference pursuant to Rule 26(f) Fed. R. Civ. P. heard in January 1993. The district court did not believe a discovery conference was necessary. John and Grimm demanded

the production of documents identified in their discovery plan. The district court conducted a hearing on April 27, 1993 and considered a letter, dated April 21, requesting his assistance in directing Columbus-America to produce a list of 19 documents and the original copies of redacted materials that had been produced.

At the April 27 hearing the court advised counsel that he was not going to review the many documents which were redacted by Columbus-America to determine whether they were discoverable and that the court had to rely upon what the lawyer said as the basis for the redaction.

At the close of the April 27 hearing counsel agreed to confer in an effort to refine the request for production. After conferring with counsel a motion, dated May 12 with supporting affidavit, was brought on for a hearing on June 7, 1993 when the Court stated that discovery is the greatest waste of time that's ever been created, and ruled that it was not going to require any more production, except what has been stated will be

produced.

Columbus-America told the Court that their documents were redacted because the redacted information was confidential laboring under the misconception that the other parties must offer evidence that its redactions are improper before it may be compelled to produce unredacted documents.

There is no absolute privilege for trade secrets and similar confidential information. To resist discovery a person must first establish that the information is a trade secret and then demonstrate that its disclosure might be harmful Centurian Industries, Inc. v. Warren Steuer, Etc., 665 F.2d 323, 325 (1981).

Columbus-America at three different times alleged in its pleadings that it located the CENTRAL AMERICA in three different places. In 1987 it obtained a permanent injunction to salvage a wreck 32 miles east of where the CENTRAL AMERICA sank. When it obtained that injunction its files included sonar images of the

CENTRAL AMERICA which were obtained in its 1986 survey. It also had in its files a sonar image of the CENTRAL AMERICA which was obtained during the CONRAD survey.

Ryan's target #4 was labeled their target "F". Williamson in 1986 made various measurements of the sonar imagery obtained in their 1986 survey, and it was only target "F" which measured to be about 300 feet.

Although Columbus-America spent the entire summer of 1987 at sea and, in addition to working at its injunction site, visited the sites of other targets observed in the 1986 survey, it denied making any effort to verify whether or not target "F" was the CENTRAL AMERICA until it went back to sea in late summer of 1988, when it headed directly to target "F".

The unredacted logs may well have included evidence to the contrary.

The district court also denied our request to inquire into the terms of the settlement agreement between Columbia University and

Columbus-America which was announced on the eve of trial. Our request that the court view the agreement was also denied.

Grimm and John made an offer of proof that the settlement provided for agreement on the part of Columbia to prevent the giving of testimony by Dr. Ryan at trial and he feared he would be terminated by the University if he appeared as a witness.

It was alleged that the terms of the settlement agreement between Columbus-America and Columbia provided that if any Columbia employees testified, the University was to be penalized.

Dr. Ryan did not appear as a witness and Grimm and John had no expert witness to testify at the trial.

In 1990, Professor Ryan was shown a letter of Charles Herndorf, Science Coordinator of the SS CENTRAL AMERICA Project, to Barbara Hecker, dated November 25, 1989 in which Dr. Herndorf thanked Dr. Hecker, a biologist at Columbia University, for her willingness to

look at some photographs from the wreck site of the SS CENTRAL AMERICA "[which] lies about 200 km off Charleston S.C. in nearly 2300 m of water (32 N, 77W)." Photographs were enclosed with the letter. Some of the photographs showed gold. They were taken at a depth of 2300 meters. The 2300 meter isobath is far from the first injunction box. Ryan reported this to the financial administrator of Lamont-Doherty who suggested Ryan call counsel. An investigation was conducted which revealed that Columbus America had moved their salvage operation to the area of Ryan's targets #3 and #4. Grimm, John and Columbia University filed their motions to intervene.

Were it not for the Herndorf letter, it is unlikely Grimm and John would ever have learned of Thompson's thimblerig.

IV. THE QUESTIONS PRESENTED ARE IMPORTANT.

The recent development of equipment permitting recovery from the sea floor of objects thought to have been lost forever has brought with it disputes as to ownership

and salvor's rights.

This decision questions admiralty principles which have been recognized for centuries.

The salvage claim of John and Grimm has been confused with copyright and trade secret concepts.

The same reasoning offered by Judge Sofaer in Hener v. U.S., 525 F.Supp.350 (S.D.N.Y.1981) for admiralty disfavoring the law of finds may be applied to the law of unfair competition.

The aim of salvage law is the preservation of property and encourages less competitive and secret conduct than the law of unfair competition.

Review by this Court is required to resolve the conflict between the 4th and 5th Circuits and provide guidance to the cases which are to follow.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 1995

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QUESTIONS PRESENTED

1. Whether this Court should review the district court's correct factual finding, upheld on appeal, that respondent did not use any information from petitioners in locating and recovering the shipwreck that is at issue in this case?

2. Whether this Court should reconsider fact-specific discovery rulings made by the district court and affirmed on appeal?

LIST OF PARTIES

The only party not identified in the list provided in the petition is the Insurance Company of North America, which was a claimant below. Pursuant to Supreme Court Rule 29.1, the Court is advised that respondent has no parent companies or subsidiaries that are not wholly owned.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Columbus-America Discovery Group ("Columbus-America"), respectfully submits this brief in opposition to the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case. The petition raises no issues that merit plenary review.

STATEMENT OF THE CASE

This is the second round of appellate proceedings in this case, which arises from Columbus-America's discovery of the 1857 shipwreck of the S.S. CENTRAL AMERICA. The facts will be briefly stated here only insofar as they bear on the issues raised by petitioners.

Harry G. John and Jack F. Grimm intervened in this salvage action on the eve of the first trial, alleging that Columbus-America had found the shipwreck

by using some of the information they claimed to have gathered during their own unsuccessful efforts to locate it, and that Columbus-America's alleged use of that information was improper. They therefore claimed that they were entitled to a salvage award. In the 1990 trial, the district court found no evidence whatever that any data allegedly generated by petitioners was used to locate the shipwreck or that petitioners contributed in any way to Columbus-America's success. Pet. App. 370a.[1] The court awarded the shipwreck to Columbus-America, based on its factual finding that the sunken vessel and its cargo had been abandoned. *Id.* 395a-396a.

On appeal, the Fourth Circuit reversed in a split decision, holding that no abandonment had occurred. Pet. App. 274a. In remanding the case, the court also determined that the petitioners should be accorded an opportunity for additional discovery in the course of the further proceedings. *Id.* 284a-285a.

On remand, the district court conducted a second trial and granted Columbus-America a ninety percent salvage award. Pet. App. 202a. The petitioners were allowed to take further discovery on their claims, which were ultimately rejected in their entirety. Based on the evidence and testimony presented, the court found as a fact that Columbus-America had never used the data that petitioners vigorously claimed it had used. *Id.* 167a. ("From the totality of the evidence in this case, it would be pure speculation or conjecture to say that the [information in question] in any way contributed to [Columbus-America's] location of the Central America, or that it made any use of such data in its search for the Central America."). The court further concluded that, in any event, petitioners had no legal basis for their claim that Columbus-America had supposedly misappropriated their

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[1] References to "Pet. App." refer to the Appendix filed by certain insurance underwriters with their earlier petition in Case No. 95-415, which petitioners here apparently seek to incorporate by reference.

data. *Id.* 145a-148a. In short, the district court dismissed petitioners' baseless claims on several grounds.

Petitioners again appealed, and this time the Fourth Circuit affirmed, unanimously rejecting all of their claims. Indeed, the court of appeals adopted both of the district court's alternate grounds, upholding the factual finding that Columbus-America did not use the information in question and concluding that petitioners had no legal basis to assert a misappropriation claim, even if any such claim had been factually supported. Pet. App. 35a-39a.[2] The Fourth Circuit also concluded that the district court did not abuse its discretion in rejecting petitioners' claims that they should be entitled to yet more discovery in an attempt to prove their unpersuasive claims. *Id.* 39a-40a n.16.[3] Petitioners filed for rehearing and made a suggestion for rehearing *en banc*, which the Fourth Circuit denied without comment. *Id.* 402a.

REASONS FOR DENYING THE WRIT

Petitioners present two issues, neither of which is cert-worthy, for reasons that can and will be stated in short order. In essence, petitioners raise merely factual, case-specific issues that are not of general importance and that do not present any conflict among the circuits or with any of the Court's decisions. For these reasons, the Court should deny the petition.

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[2] The court of appeals recognized that petitioners' factual claims were grounded on the "rather fantastic theory" that their data definitively revealed the location of the shipwreck even "though [they] themselves had not acted on this 'definitive' information, and had, in fact, felt so little stirred by it that they gave all their rights in it to a midwestern monastery." Pet. App. 37a-38a & 40a n.16.

[3] The court of appeals remanded the case for further proceedings on ownership claims made by certain underwriters, which are entirely unrelated to the claims raised by these petitioners here. Pet. App. 71a-72a.

I. THE FACTUAL FINDING THAT PETITIONERS' INFORMATION WAS NOT USED TO LOCATE THE SHIPWRECK IS UNWORTHY OF REVIEW.

Petitioners begin by urging the Court to resolve the discrete legal issue of whether a party seeking a salvage award in an admiralty proceeding must have a proprietary interest in information that it provides *when* that information assists in the discovery or preservation of any property that is recovered. Pet. 15-17. In particular, they allege that the decision below conflicts on this issue with one older federal decision—*South American S.S. Co. v. Atlantic Towing Co.*, 22 F.2d 16 (5th Cir. 1927).

The short answer to petitioners' contention is that the issue is not properly presented here. Regardless of how the Court might resolve this issue, the decision below would still stand on the alternative ground that Columbus-America made no use of the data in question to locate this shipwreck. The trial court reviewed the evidence and testimony and made this finding as a matter of fact, *see* Pet. App. 167a, which was upheld by the court below as not clearly erroneous, *see id.* 39a ("[T]he intervenors offered a theory of the case that hinged on what could charitably be called circumstantial evidence.").

Indeed, a contrary factual finding is a prerequisite to any valid legal claim in this regard, as petitioners recognize, citing controlling precedent. *See* Pet. 17 (salvage award is proper for all parties "who engaged in the enterprise and *materially contributed* to the saving of the property") (citing THE BLACKWALL, 77 U.S. (10 Wall.) 1, 11-12 (1870)) (emphasis added). Given the alternative factual ground for the district court's decision, which was affirmed by the court of appeals, certiorari review cannot be appropriate. *See* R. Stern & E. Gressman, *et al., Supreme Court Practice* 189 (7th ed. 1993).

A longer answer, which will be touched on only briefly, is that the case cited by petitioners (where one party provided information in cooperation with another and

that information *was* used by a steamship that was in peril) is completely inapposite here. In this case, the courts below mentioned whether the petitioners had a proprietary interest in the disputed information because petitioners had alleged that Columbus America had either misappropriated it or acted improperly in obtaining it. The petitioners, moreover, had provided the disputed data to third parties. It thus was appropriate for the courts below to mention the "proprietary interest" issue in addressing whether the petitioners had any actual grounds for raising such claims. In the end, petitioners' claims were rejected by both the district court and the Fourth Circuit. *See* Pet. App. 168a-39a. Thus, this case does not present any issue that implicates the *Atlantic Towing* case.

Accordingly, even if the putative "conflict" drummed up by the petitioners warranted review, which it plainly does not, it simply is not properly presented in the factual and legal posture of this case.

II. FACT-SPECIFIC DISCOVERY RULINGS DO NOT MERIT RECONSIDERATION HERE.

The second issue raised by petitioners, which is a claim that the trial court erred in denying some of their discovery requests, also does not merit review here. Issues of this sort rarely warrant the Court's review, because they typically involve fact-specific and case-specific disputes that the trial courts have broad discretion to resolve. *See* R. Stern & E. Gressman, *et al., Supreme Court Practice* at 189-191. Without belaboring these points here, it is sufficient to note: (1) petitioners simply reargue the facts, often in the most speculative manner; (2) they were given ample discovery and every opportunity to prove their "rather fantastic" claims, which they were unable to do; (3) they do not allege any conflict among the courts or with any decisions of this Court; and (4) they do not describe any issue of general importance on or beyond the facts of this case.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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October 1995